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1 **ATCP 127.32 Opening disclosures.** (1) DISCLOSURES REQUIRED. A mail
2 solicitation shall disclose all of the following in writing:

3 (a) The name of the principal seller.

4 **NOTE:** For example, a firm making mail solicitations on behalf of another
5 company must disclose the name of the company for which it is acting as
6 agent. The firm may also disclose its own identity, but is not required to do
7 so.

8 (b) That the seller is offering or promoting the sale of consumer goods or services.

9 (c) The nature of the goods or services which the seller is offering or promoting.

10 (2) FICTITIOUS NAMES. A seller may not use any fictitious name under sub. (1)(a) or
11 s. ATCP 127.34(1)(d), except that a seller may use a trade name if all of the following
12 apply:

13 (a) The seller is widely known by and consistently does business under that name.

14 (b) The name does not have the tendency or capacity to confuse or mislead the
15 consumer as to the seller's true identity.

16 **ATCP 127.34 Disclosures prior to sale.** (1) DISCLOSURES REQUIRED. In a mail
17 transaction, a seller shall disclose all of the following to a consumer, in writing, before the
18 consumer enters into a purchase contract and before the seller takes the consumer's credit
19 card number or accepts any payment from the consumer:

20 (a) The nature and quantity of consumer goods or services included in the sale.

21 (b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

NOTE: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name and mailing address of the principal seller.

(e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) LANGUAGE OTHER THAN ENGLISH. If the primary language used in a mail solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

ATCP 127.36 Prize promotions. (1) ILLEGAL LOTTERIES. In a mail transaction, no seller may use a prize promotion that violates s. 945.02(3), Stats.

(2) PRIZE NOTICE; REQUIREMENTS. In a mail transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the material terms of a prize promotion used in a mail transaction.

1 **ATCP 127.38 Unauthorized payment.** No seller in a mail transaction may obtain or
2 submit for payment any check, draft or other negotiable instrument drawn on a consumer's
3 account without that consumer's express, verifiable authorization. The authorization shall
4 comply with s. ATCP 127.10.

5 **ATCP 127.40 Delivering ordered goods.** A seller in a mail transaction shall comply
6 with s. 100.174, Stats.

7 **ATCP 127.42 Credit card laundering.** (1) No merchant may present to or deposit
8 into a credit card system for payment, or cause another person to present to or deposit into
9 a credit card system for payment, any credit card sales draft generated by a mail transaction
10 that is not a sale by that merchant to the holder of that credit card.

11 (2) No person may employ, solicit or cause a merchant to violate sub. (1).

12 (3) No seller engaged in a mail transaction may, by means of a business relationship
13 or affiliation with a merchant, obtain access to a credit card system unless that access is
14 authorized by that merchant's written agreement with the credit card system operator, or
15 with an acquirer licensed or authorized by the credit card system operator.

16 **ATCP 127.44 Misrepresentations.** No seller may do any of the following, directly
17 or by implication, in a mail transaction:

18 (1) Misrepresent a seller's identity, affiliation, location or characteristics.

19 (2) Misrepresent the nature or purpose of a mail solicitation.

1 (3) Misrepresent the nature or terms of a mail transaction, or any document related to
2 that transaction.

3 (4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail
4 to disclose material costs payable by the consumer.

5 (5) Misrepresent the nature, quantity, material characteristics, performance or efficacy
6 of the goods or services offered or promoted by a seller.

7 (6) Misrepresent or fail to disclose material restrictions, limitations or conditions on
8 the purchase, receipt, use or return of goods or services offered or promoted by a seller.

9 (7) Misrepresent the material terms of a seller's refund, cancellation, exchange,
10 repurchase or warranty policies.

11 (8) Misrepresent that a seller is offering consumer goods or services free of charge or
12 at a reduced price.

13 (9) Misrepresent that a seller is affiliated with, or endorsed by, any government or
14 3rd-party organization.

15 (10) Misrepresent that the seller has specially selected the consumer.

16 (11) Misrepresent that the seller is conducting a special sales promotion, is making a
17 special offer limited to a few persons, is making a special offer for a limited period of time,
18 or is authorized to place the offered goods or services in a limited number of homes.

19 (12) Represent that the seller is participating in a contest or conducting a survey
20 unless the representation is true and all of the following apply:

1 (a) The seller first makes all of the opening disclosures under s. ATCP 127.32.

2 (b) The seller concurrently discloses the name of the contest or survey sponsor, and
3 the specific terms of the contest or survey.

4 (c) The seller concurrently discloses that the seller is attempting to sell goods or
5 services, or to obtain information to identify sales prospects, if that is the case.

6 (13) Misrepresent any material aspect of a personal investment opportunity offered to
7 the consumer, including any aspect such as risk, liquidity, earnings potential or
8 profitability.

9 (14) Fail to disclose, in connection with every purported offer of free goods or
10 services in a mail transaction, any costs which the consumer must incur and any conditions
11 which the consumer must meet in order to receive those free goods or services. This does
12 not prohibit a combination offer that is covered by, and complies with, s. 100.18(2), Stats.

13 (15) Make any false, deceptive or misleading representation to a consumer.

14 **ATCP 127.46 Prohibited practices.** No seller may do any of the following in a mail
15 transaction:

16 (1) Threaten, intimidate or harass a consumer.

17 (2) Request or receive payment for seeking or arranging a loan or extension of credit
18 until the consumer actually receives that loan or extension of credit, if the seller has
19 represented that efforts to obtain a loan or extension of credit would likely be successful.

1 (3) Fail to do either of the following if the transaction qualifies as a consumer
2 approval transaction under s. 423.201, Stats., and is not subject to s. 423.202(4), Stats.:

3 (a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

4 (b) Honor the consumer's right to cancel under s. 423.202, Stats.

5 **NOTE:** Under s. 423.202, Stats., a consumer may cancel a consumer approval
6 transaction until midnight of the 3rd business day after the seller gives the
7 consumer a required written notice of cancellation rights under s. 423.203,
8 Stats. The consumer's cancellation rights under s. 423.202, Stats., are in
9 addition to any other cancellation rights which the consumer may have
10 under contract law.

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12 **ATCP 127.48 Recordkeeping.** (1) RECORDS REQUIRED. A seller engaged in mail
13 transactions shall keep all of the following records related to those transactions:

14 (a) Copies of all mail solicitations and other documents provided to consumers in
15 mail transactions. This paragraph does not require a seller to keep duplicate copies of
16 substantially identical documents.

17 (b) The following records related to each prize which the seller offers or awards to
18 consumers if the seller represents to any consumer, directly or by implication, that the prize
19 has a value of \$25 or more:

20 1. An identification of the prize.

21 2. The name and last known address of every consumer who received the prize.

22 (c) The name and last known address of every consumer who purchased goods or
23 services in a mail transaction with the seller, the date on which the consumer purchased

1 those goods or services, the date on which the seller provided those goods or services to the
2 consumer, and the amount which the consumer paid for those goods or services.

3 (d) Documentation that the seller has systems and procedures which assure
4 compliance, in the ordinary course of business, with s. 100.174, Stats.

5 (2) KEEPING RECORDS. (a) A seller shall keep each record required under sub. (1) for
6 at least 2 years after the seller creates that record.

7 **NOTE:** A seller may keep records required under sub. (1) in the form, manner,
8 format and place in which the seller would normally keep those records in
9 the ordinary course of business.

10 (b) The department, pursuant to an investigation of possible violations of this
11 subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably
12 relevant to that investigation. The seller shall provide the requested copies within a
13 reasonable time specified by the department.

14 **NOTE:** See ss. 93.15 and 93.16, Stats.

15 (c) An agent engaged in mail transactions on behalf of a principal seller need not keep
16 duplicate copies of records which that principal seller keeps according to this section. A
17 principal seller who contracts to have an agent keep records for the principal seller need not
18 keep duplicate copies of records which that agent keeps according to that contract and this
19 section. An employee need not keep duplicate copies of records that his or her employer
20 keeps according to this section.
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- 1 **ATCP 127.50 Assisting violations.** No person may knowingly assist any seller to
- 2 engage in any activity or practice in violation of this subchapter.

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1 (d) The nature of the goods or services which the seller is offering or promoting.

2 (2) MAKING THE DISCLOSURES. A seller shall make the disclosures under sub. (1)
3 before asking any questions or making any statements to a consumer, other than an initial
4 greeting. The seller shall make the disclosures orally and in writing.

5 (3) FICTITIOUS NAMES. (a) A seller may not use any fictitious name under sub. (1)(a)
6 or s. ATCP 127.64(1)(d), except that a seller may use a trade name if all of the following
7 apply:

8 1. The seller is widely known by and consistently does business under that name.

9 2. The name does not have the tendency or capacity to confuse or mislead the
10 consumer as to the seller's true identity.

11 (b) An individual making face-to-face solicitations as an employee or agent of
12 another seller may disclose a fictitious individual name under sub. (1)(b) if all of the
13 following apply:

14 1. No other individual making face-to-face solicitations for the same seller uses the
15 same fictitious name.

16 2. The seller for whom the individual is making the face-to-face solicitation keeps
17 records under s. ATCP 127.76(1)(d) that correlate the fictitious name with the actual name
18 and address of the individual seller.

19 **NOTE:** Subsection (3)(b) balances the needs of consumers against the privacy
20 interests of individuals employed to make face-to-face solicitations on
21 behalf of a seller.

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2 **ATCP 127.64 Disclosures prior to sale.** (1) DISCLOSURES REQUIRED. In a face-to-
3 face transaction, a seller shall disclose all of the following to a consumer, in writing, before
4 the consumer enters into any purchase contract and before the seller takes the consumer's
5 credit card number or accepts any payment from the consumer:

6 (a) The nature and quantity of consumer goods or services included in the sale.

7 (b) The total cost to purchase and receive the consumer goods or services.

8 (c) All material terms and conditions affecting the sale, receipt or use of the consumer
9 goods or services, including credit terms if any.

10 **NOTE:** Consumer credit disclosures under par. (c) must comply with applicable
11 requirements under ch. 422, Stats., and federal law.

12
13 (d) The name, mailing address and telephone number of the principal seller.

14 **NOTE:** For example, an individual making face-to-face solicitations on behalf of
15 the ABC company must disclose the name, address and telephone number
16 of that company.

17
18 (e) The seller's policy related to refunds, cancellations, exchanges or repurchases if
19 any of the following apply:

20 1. The seller has a policy that prevents or substantially limits refunds, cancellations,
21 exchanges or repurchases.

22 2. The seller makes any claim or representation regarding refunds, cancellations,
23 exchanges or repurchases.

1 (2) COPIES OF SALES AGREEMENTS. Whenever a consumer signs any written
2 agreement in a face-to-face transaction, the seller shall provide the consumer with a true
3 copy of that agreement.

4 (3) LANGUAGE OTHER THAN ENGLISH. (a) If the primary language used in a face-to-
5 face solicitation is not English, the seller shall make the disclosures under sub. (1) in the
6 language primarily used.

7 (b) If the primary language used in a face-to-face transaction is not English, every
8 written agreement signed by the consumer shall be in English and the language primarily
9 used.

10 **ATCP 127.66 Prize promotions.** (1) ILLEGAL LOTTERIES. In a face-to-face
11 transaction, no seller may use a prize promotion that violates s. 945.02(3), Stats.

12 (2) PRIZE NOTICE; REQUIREMENTS. In a face-to-face transaction, no seller may use a
13 prize promotion that violates s. 100.171, Stats.

14 (3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the
15 material terms of a prize promotion used in a face-to-face transaction.

16 **ATCP 127.68 Unauthorized payment.** No seller in a face-to-face transaction may
17 obtain or submit for payment any check, draft or other negotiable instrument drawn on a
18 consumer's account without that consumer's express, written authorization. Express
19 written authorization may include the customer's signature on the check, draft or negotiable
20 instrument.

1 **ATCP 127.70 Credit card laundering.** (1) No merchant may present to or deposit
2 into a credit card system for payment, or cause another person to present to or deposit into
3 a credit card system for payment, any credit card sales draft generated by a face-to-face
4 transaction that is not a sale by that merchant to the holder of that credit card.

5 (2) No person may employ, solicit or cause a merchant to violate sub. (1).

6 (3) No seller engaged in a face-to-face transaction may, by means of a business
7 relationship or affiliation with a merchant, obtain access to a credit card system unless that
8 access is authorized by that merchant's written agreement with the credit card system
9 operator, or with an acquirer licensed or authorized by the credit card system operator.

10 **ATCP 127.72 Misrepresentations.** No seller may do any of the following, directly
11 or by implication, in a face-to-face transaction:

12 (1) Misrepresent a seller's identity, affiliation, location or characteristics.

13 (2) Misrepresent the nature, purpose or intended length of a face-to-face solicitation.

14 (3) Misrepresent the nature or terms of a face-to-face transaction, or any document
15 related to that transaction.

16 (4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail
17 to disclose material costs payable by the consumer.

18 (5) Misrepresent the nature, quantity, material characteristics, performance or efficacy
19 of the goods or services offered or promoted by a seller.

1 (6) Misrepresent or fail to disclose material restrictions, limitations or conditions on
2 the purchase, receipt, use or return of goods or services offered or promoted by a seller.

3 (7) Misrepresent the material terms of a seller's refund, cancellation, exchange,
4 repurchase or warranty policies.

5 (8) Misrepresent that a seller is offering consumer goods or services free of charge or
6 at a reduced price.

7 (9) Misrepresent that a seller is affiliated with, or endorsed by, any government or
8 3rd-party organization.

9 (10) Represent that the seller has specially selected the consumer unless the
10 representation is true and the seller concurrently discloses to the consumer the specific
11 basis on which the seller makes the representation. The seller may not misrepresent that
12 basis.

13 (11) Represent that the seller is conducting a special sales promotion, is making a
14 special offer limited to a few persons, is making a special offer for a limited period of time,
15 or is authorized to place the offered goods or services in a limited number of homes, unless
16 the representation is true and the seller concurrently discloses to the consumer the specific
17 basis on which the representation is made. The seller may not misrepresent that basis.

18 (12) Represent that the seller is participating in a contest or conducting a survey
19 unless the representation is true and all of the following apply:

20 (a) The seller first makes all of the opening disclosures under s. ATCP 127.62.

1 (b) The seller concurrently discloses the name of the contest or survey sponsor, and
2 the specific terms of the contest or survey.

3 (c) The seller concurrently discloses that the seller is attempting to sell goods or
4 services, or to obtain information to identify sales prospects, if that is the case.

5 (13) Misrepresent any material aspect of a personal investment opportunity offered to
6 the consumer, including any aspect such as risk, liquidity, earnings potential or
7 profitability.

8 (14) Fail to disclose, in connection with every purported offer of free goods or
9 services in a face-to-face transaction, any costs which the consumer must incur and any
10 conditions which the consumer must meet in order to receive those free goods or services.

11 This does not prohibit a combination offer that is covered by, and complies with, s.
12 100.18(2), Stats.

13 (15) Make any false, deceptive or misleading representation to a consumer.

14 **ATCP 127.74 Prohibited practices.** No seller may do any of the following in a
15 face-to-face transaction:

16 (1) Threaten, intimidate or harass a consumer.

17 (2) Fail to leave a consumer's premises upon request.

18 (3) Request or receive payment for seeking or arranging a loan or extension of credit
19 until the consumer actually receives that loan or extension of credit, if the seller has
20 represented that efforts to obtain a loan or extension of credit would likely be successful.

1 (4) Fail to do either of the following if the transaction qualifies as a consumer
2 approval transaction under s. 423.201, Stats., and is not subject to s. 423.202(4), Stats.:

3 (a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

4 (b) Honor the consumer's right to cancel under s. 423.202, Stats.

5 **NOTE:** Under s. 423.202, Stats., a consumer may cancel a consumer approval
6 transaction until midnight of the 3rd business day after the seller gives the
7 consumer a required written notice of cancellation rights under s. 423.203,
8 Stats. The consumer's cancellation rights under s. 423.202, Stats., are in
9 addition to any other cancellation rights which the consumer may have
10 under contract law.

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12 **ATCP 127.76 Recordkeeping.** (1) RECORDS REQUIRED. A seller engaged in face-
13 to-face transactions shall keep all of the following records related to those transactions:

14 (a) Copies of all advertising, brochures, sales scripts, seller training materials, sales
15 and promotional materials, and documents provided to consumers in face-to-face
16 transactions. This paragraph does not require a seller to keep duplicate copies of
17 substantially identical documents.

18 (b) The following records related to each prize which the seller offers or awards to
19 consumers if the seller represents to any consumer, directly or by implication, that the prize
20 has a value of \$25 or more:

21 1. An identification of the prize.

22 2. The name and last known address of every consumer who received the prize.

1 (c) The name and last known address of every consumer who purchased goods or
2 services in a face-to-face transaction with the seller, the date on which the consumer
3 purchased those goods or services, the date on which the seller provided those goods or
4 services to the consumer, and the amount which the consumer paid for those goods or
5 services.

6 (d) The following information related to every individual who has made face-to-face
7 solicitations as the seller's employee or agent:

8 1. The individual's name, last known address and telephone number.

9 2. Every fictitious name which the individual has used when making face-to-face
10 solicitations. No seller may permit more than one employee or contract agent to use the
11 same fictitious name.

12 3. The individual's job title or titles.

13 (e) All written authorizations required under s. ATCP 127.68.

14 (2) KEEPING RECORDS. (a) A seller shall keep each record required under sub. (1) for
15 at least 2 years after the seller creates that record.

16 **NOTE:** A seller may keep records required under sub. (1) in the form, manner,
17 format and place in which the seller would normally keep those records in
18 the ordinary course of business.

19 (b) The department, pursuant to an investigation of possible violations of this
20 subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably
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1 relevant to that investigation. The seller shall provide the requested copies within a
2 reasonable time specified by the department.

3 **NOTE:** See ss. 93.15 and 93.16, Stats.

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5 (c) An agent engaged in face-to-face transactions on behalf of a principal seller need
6 not keep duplicate copies of records which that principal seller keeps according to this
7 section. A principal seller who contracts to have an agent keep records for the principal
8 seller need not keep duplicate copies of records which that agent keeps according to that
9 contract and this section. An employee need not keep duplicate copies of records that his
10 or her employer keeps according to this section.

11 **ATCP 127.78 Assisting violations.** No person may knowingly assist any seller to
12 engage in any activity or practice in violation of this subchapter.

13
14 **EFFECTIVE DATE.** The rules contained in this rulemaking order shall take effect
15 on the first day of the month following publication in the Wisconsin administrative
16 register, as provided under s. 227.22(2)(intro.), Stats.

17
18 Dated this _____ day of _____, 19____.

19
20 STATE OF WISCONSIN
21 DEPARTMENT OF AGRICULTURE,
22 TRADE AND CONSUMER PROTECTION
23

24
25 By _____
26 Ben Brancel, Secretary